

Exhibit B

1 In claim 1 where the defendant was just
 2 referring to the term diverter and if they configured to
 3 transition, that's the second place it appears in that
 4 claim. So if we look above there, the first time the term
 5 diverter is used in the claim is above where it says, a
 6 diverter having an inlet, a first outlet in fluid
 7 communication with the reservoir and a second outlet. So
 8 that is clearly structure. And, of course, with the
 9 presumption being that this is not a means-plus-function
 10 claim, so the term means is not used, then Kurin has to be
 11 able to show Your Honor that there is no structure in the
 12 claim thereby converting this into a means-plus-function
 13 claim, that there's only function that is discussed in the
 14 claim, and we don't have that here. The first time that a
 15 diverter, the term a diverter appears, it goes directly to
 16 describing the structure of the diverter.

17 THE COURT: All right. Do defendants want to
 18 say anything else?

19 MR. HANGARTNER: Your Honor, I would just point
 20 out that if the -- there can be a structure recited in a
 21 means-plus-function claim, but if that structure is
 22 insufficient to perform the required function, then it is
 23 still a functional claim and that's exactly what we have
 24 here. It's laid out in the briefing. But the structural
 25 components identified here, and this is shown in some detail

1 into this will just go willy-nilly down the path. There's
 2 nothing directing it down one of those two paths, and that
 3 is, in fact, the specific functionality that's claimed for
 4 the diverter.

5 THE COURT: Plaintiff, do you want to respond to
 6 that?

7 MS. BROOKS: I do, Your Honor. And so going
 8 back to our slides, if the Court -- and I don't know if
 9 anyone can do this from their homes.

10 THE COURT: I've got it. I have it in chambers.

11 MS. BROOKS: Oh, wonderful. Okay. So at
 12 slide 41, hopefully we're on the same slide. We show here
 13 the structure itself in the claims. Claim 1 and 21 we put
 14 up there.

15 And if I'm hearing defendant's argument
 16 correctly, if you look at that, they agree that it is
 17 structure, and the only thing that I'm hearing them argue is
 18 that there's not enough structure there to be able to either
 19 send the sample down the right-hand side appears in Figure
 20 6A versus the left-hand side as it appears in Figure 6B.
 21 That clearly would be left -- that's more of an enablement
 22 argument.

23 Would one of skill in the art in looking at the
 24 claims of the invention and reading the specification be
 25 able to make and use the claimed invention. We submit that

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1 in our slide 27 and 28, the structural components that are
 2 described in these claims are not sufficient to perform the
 3 function of the diverter, of a diverter that's required by
 4 the claim.

5 THE COURT: All right. So let's actually pull
 6 up the slide. You said it was slide 27. Is that right?

7 MR. HANGARTNER: Yes, Your Honor. Slide 27, the
 8 title is claimed structure insufficient to perform this
 9 function, and what we've shown on the left side are two
 10 modified figures from the '001 patent, Figure 6A and 6B,
 11 and the modification was to remove the diversion mechanism
 12 shown in those so that what we're seeing here is the claimed
 13 structure.

14 If you look carefully at claim 1, when you see
 15 the structure of this claim, there's an inlet that's coupled
 16 to the patient and that's in 514. A first inlet includes
 17 communication with the reservoir. That's 516. We have a
 18 second outlet, 518, which is shown down in Figure 6B in
 19 blue. Then we have the inlet being coupled to the first
 20 outlet. That's our 6A flow patch in yellow, and the inlet
 21 coupled to the second outlet, and that's the flow path in 6B
 22 as shown in orange.

23 Now, given all of that structure, there is
 24 nothing there that can perform the agreed upon function of
 25 the diverter, which is to direct the flow. The flow coming

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1 they would. This is a very simple premise, and that there
 2 are multiple ways one could have a diverter that would
 3 divert the flow down the right-hand side on one occasion or
 4 down the left-hand side on another occasion.

5 What defendants are really trying to do is have
 6 this limited to a very specific structure, and the way they
 7 are doing that is by arguing that this turning what is
 8 clearly not a means-plus-function claim because it has very
 9 specific structure right in the claim and trying to argue
 10 that it is one. There may come a day where --

11 THE COURT: All right. I mean, I think, you
 12 know, can you just address specifically then -- I've got now
 13 concerns that there's not a structure recited in the claims
 14 that is sufficient to accomplish a transition that the
 15 diverter is configured to accomplish. So can you show me
 16 anything in the language of claim 1 that actuates the
 17 transition?

18 MS. BROOKS: I would say yes, Your Honor, or if
 19 we go back --

20 THE COURT: All right.

21 MS. BROOKS: I'm sorry, Your Honor.

22 THE COURT: I should have used the word
 23 effectuate the transition.

24 MS. BROOKS: And, yes, Your Honor. What I would
 25 say is to one of skill in the art in reading the claim, they